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BILL TEXT AND BACKGROUND FOR THE WEEK OF MARCH 2, 2009

- Complete Consideration of H.R. 1106 Helping Families Save Their Homes Act of 2009
- H.R. 157 District of Columbia House Voting Rights Act of 2009

H.R. 1106 – HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009(Rep.

Conyers/Frank – Judiciary/Financial Services) (Subject to a Rule)

Bill Text: HTML Version, PDF Version

Bill Summary and Status

Rules Committee Meeting: <u>H. Res. 190: Rule and Committee Report</u>
Committee: <u>Committee on the Judiciary</u>; <u>Committee on Financial Services</u>
Committee Staff Contact: Judiciary 5-3951; Financial Services 5-4247

LEGISLATION AT A GLANCE:

H.R. 1106, THE HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The deep contraction in the economy and in the housing market has created devastating consequences for homeowners and communities throughout the country.

- Millions of responsible families who make their monthly payments and fulfill their obligations have seen their property values fall, and are **now unable to refinance at lower mortgage rates.**
- Millions of workers have lost their jobs or have had their hours cut back, and they are <u>now struggling</u> to stay current on their mortgage payments with nearly 6 million households facing possible foreclosure.
- Neighborhoods are struggling, <u>as each foreclosed home reduces nearby property values</u> by as much as 9 percent.

President Obama is working with Congress to address the current crisis in the housing market. The Helping Families Save Their Home Act is the first integral step toward implementing President Obama's comprehensive Homeowner Affordability and Stability Plan, which he announced and outlined last Wednesday. Nearly all of the provisions included in this bill are part of the President's Plan.

SUMMARY OF H.R. 1106, THE HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

TITLE I – PREVENTION OF MORTGAGE FORECLOSURES

Bolster FHA and VA Authority to Protect Investors and Ensure Loan Modifications Occur:

The bill helps veterans and other homeowners to avoid foreclosure by allowing the Department of Veterans Affairs, the Federal Housing Administration, and U.S. Department of Agriculture to guarantee and/or insure mortgage loans modified either out of court or in a bankruptcy case. This will provide financial incentives for lenders to voluntarily modify mortgage loans in lieu of foreclosure. The bill expands the FHA's mortgage loan modification abilities to keep more people in their homes and thereby reduce foreclosures by allowing a reduction of interest payments of up to 30% of the outstanding loan balance.

<u>Judicial Modifications of Home Mortgages During Bankruptcy for Borrowers Who Have Run Out of Options</u>: The bill will allow judicial modifications of certain mortgage loans on a homeowner's principal residence if the homeowner meets specified stringent criteria. Under current law, virtually every other secured claim may be judicially modified, including claims secured by vacation homes, family farms, and investment properties. This relief is extended <u>only to mortgages that originated prior to the Act's date of enactment</u> so that bankruptcy judges can modify mortgages when families exhaust other options. Specifically, the bill would:

- Permit the mortgage's repayment period to be extended so that the mortgage is more affordable.
- Authorize an exorbitant mortgage interest rate to be reduced to a level that will keep the mortgage affordable over the long-term while also compensating creditors appropriately for risk.
- Require the homeowner facing foreclosure to attempt to notify the lender and work out a loan modification *before* he or she can apply for judicial modification.
- Ensure lenders provide proper notice when assessing fees and allow judges to waive prepayment penalties.
- Maintain the debtor's legal claims against predatory lenders while in bankruptcy.
- Prohibit a borrower convicted of fraud in obtaining the mortgage from being allowed to modify his or her mortgage under this legislation.

• The bill would **NOT**:

- ➤ Rewrite the 2005 Bankruptcy Code amendments. The current legal prohibition on modifying primary mortgages dates back to 1978 when most mortgages were 30-year fixed rate loans owned by local banks rather than the rapidly changing adjustable rate mortgages that have been originated and sold to investors widely in recent years.
- Leave financial institutions with losses by letting families completely escape from their financial obligations, because the bill is structured to encourage families to pay their mortgages to the greatest extent that they are able.
- Increase the cost of borrowing for other homeowners because, compared to the sole alternative of foreclosure, this measure would maximize, not lessen, the value of troubled mortgages for the lender and not result in additional costs to recoup. And, the bill is limited to existing mortgages, i.e., mortgages originated prior to the date of enactment of the bill.

TITLE II - FORECLOSURE MITIGATION AND CREDIT AVAILABILITY

<u>Servicer Safe Harbor</u>: The bill provides a safe harbor from liability to mortgage servicers who engage in loan modifications workouts or other loss mitigation, regardless of any provisions in a servicing agreement, so long as the servicer acts in a manner consistent with the duty established in Homeowner Emergency Relief Act (maximize the net present value (NPV) of pooled mortgages to all investors as a whole; engage in loan modifications for mortgages that are in default or for which default is reasonably foreseeable; the property is owner-occupied; the anticipated recovery on the modification would exceed, on an NPV basis,

the anticipated recovery through foreclosure). The bill also requires mortgage servicers who modify loans under the safe harbor to regularly report to Treasury on the extent, scope and results of the servicer's modification activities.

<u>HOPE for Homeowners</u>: The bill amends the HOPE for Homeowners Program provisions of the National Housing Act to encourage more lenders to participate by reducing the fees and write downs, providing incentives for mortgage servicers to engage in modifications under the Program, and reducing administrative burdens to loan underwriters by making the requirements more consistent with standard FHA practices. Specifically, the bill would:

- Put the HUD Secretary in charge of running the program, leaving the Program Board's role as an advisory capacity.
- Change the upfront fee from 3% to "up to 2%."
- Change the annual fee from 1.5% to "up to 1%."
- Require the HUD Secretary to weigh both maximization of participation and collection of premiums when setting upfront and annual fees.
- Provide for "up to 50%" of appreciation profit share (instead of requiring 50%) and allow the sharing of this profit with the existing first lender to induce loan write downs.
- Cap profit sharing at up to the appraised value of the property when the existing loan was made.
- Permit payments to existing servicers of up to \$1,000 for each successful refinance.
- Re-instate authority to conduct an auction to refinance loans on wholesale or bulk basis.
- Include a number of administrative changes, including:
 - requiring conformity to FHA endorsement policies, as much as possible;
 - > eliminating the March 1, 2008, income affordability test;
 - ➤ eliminating certification of no intentional default on other debts, applying certification of no false information being provided to the new FHA refi loan, and eliminating reference to going to jail because of false statements;
 - > providing for less prescriptive language regarding collection of income tax returns;
 - requiring HUD to conform program documents, forms, and procedures to those in place for regular FHA loans;
 - eliminating extraneous loan-to-value restrictions on use of second lien loans to maintain property; and
 - barring borrowers with a net worth of more than \$1 million from participation in the Program.
- Offset: Reduces existing TARP authority by \$2.316 billion to offset cost of program changes.

FHA Approval: Contains numerous provisions to better ensure that predatory lending entities and individuals are not allowed to participate in the FHA home mortgage insurance program. Specifically, the bill would:

- Require HUD approval of all parties participating in the FHA single family mortgage origination process.
- Allow HUD to impose a civil money penalty against loan originators who are not HUD-approved and yet participate in FHA mortgage originations.
- Make clear that an applicant is ineligible for approval if the entity or any officer, partner, director, principal, or employee of the entity is: a) suspended or debarred by any Federal agency; b) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee; c) subject to unresolved findings contained in a HUD or other governmental audit, investigation, or review; d) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees; e) convicted of a felony related to participation in the real estate or mortgage loan industry; or f) in violation of provisions of the S.A.F.E. Mortgage Licensing Act.
- Require that HUD receive notice of the debarment and any change in licensing status of a FHA approved mortgagee.
- Require HUD to expand the existing FHA process of reviewing new applicants for FHA approval for the purpose of identifying those representing a high risk to the Mutual Mortgage Insurance Fund and

implement procedures that expand the number of loans reviewed by FHA for lenders approved within the last 12 months, and include a process for random reviews that is based on loan volume by newly approved participants.

• Require FHA approved mortgagees to use their HUD registered company names in all advertizing and to keep copies of all advertisements.

<u>Deposit Insurance</u>: The bill amends the Federal Deposit Insurance Act and the Federal Credit Union Act to enhance the liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures. Specifically, the bill would:

- Make permanent the temporary increase in deposit insurance coverage for both the FDIC Deposit Insurance Fund and the National Credit Union Administration (NCUA) Share Insurance Fund to \$250,000 (the temporary increase is currently scheduled to sunset on December 31, 2009), and include an inflation adjustment provision for future coverage.
- Extend the time limit for an FDIC Restoration Plan to rebuild the reserve ratio of the Deposit Insurance Fund from 5 years to 8 years. Establish a 5-year restoration plan for the NCUA, which is currently required to restore the equity ratio of the Share Insurance Fund within one year.
- Increase the FDIC's borrowing authority from the Treasury Department from \$30 billion to \$100 billion and the NCUA's Share Insurance Fund's borrowing authority from \$100 million to \$6 billion.
 - Any amounts borrowed must be used only for insurance purposes.
 - ➤ Neither the FDIC nor the NCUA has ever used this borrowing authority.
 - ➤ The FDIC borrowing authority amount has not changed since 1991, even though the size of the industry has tripled. The NCUA borrowing authority has not changed since 1972 when it was established, even though the size of the industry has increased from \$13.8 billion in 1972 to \$813 billion at year-end 2008.
 - Any money borrowed must be repaid, with interest, pursuant to a repayment schedule that must be in effect prior to receiving any money, and which is subject to a requirement to consult with and report to Congress.
- Allow the FDIC to charge systemic risk special assessments by rulemaking, on both insured depository institutions and depository institution holding companies. For holding company assessments, the concurrence of the Treasury would be required.

Full Committee on Financial Services Mark-up:

<u>Full Committee Markup</u>: H.R. 786, to make permanent the temporary increase in deposit insurance coverage, H.R. 787, to make improvements in the Hope for Homeowners Program, H.R. 788, to provide a safe harbor for mortgage servicers who engage in specified mortgage loan modifications, and for other purposes, February 4, 2009

- National Journal Report: Foreclosure Relief Measure Clears House Panel
- National Journal Report: Bill Protecting Lenders Clears House Financial Services

Full Committee on the Judiciary Mark-up:

<u>Full Committee Markup</u>: H.R. 200, The "Helping Families Saves Their Homes in Bankruptcy Act of 2009", January 27, 2009

- Markup Transcript
- > Opening Statement: Chairman Convers
- National Journal Report: Foreclosure Relief Bill Clears House Judiciary

CRS Reports:

<u>RL34301</u>: The Primary Residence Exception: Legislative Proposals in the 111th Congress to Amend the Bankruptcy Code to Allow the Strip Down of Certain Home Mortgages

RS22987: National Credit Union Share Insurance Fund (NCUSIF): Credit Union Deposit Insurance

R40224: Troubled Asset Relief Program and Foreclosures

GAO Reports:

<u>GAO-08-697</u>: Bankruptcy Reform: Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, June 27, 2008

GAO-09-101R: Board of Directors of the HOPE for Homeowners Program: HOPE for Homeowners

Program: Program Regulations, October 20, 2008

<u>GAO-09-231T</u>: Troubled Asset Relief Program: Status of Efforts to Address Defaults and Foreclosures on Home Mortgages, December 4, 2008

CBO Report:

CBO Cost Estimate: H.R. 1106 as Introduced

Committee on Financial Services Hearing:

<u>Full Committee Hearing</u>: Promoting Bank Liquidity and Lending Through Deposit Insurance, Hope for Homeowners, and other Enhancements, February 3, 2009

Committee on the Judiciary Hearing:

<u>Full Committee Hearing</u>: H.R. 200, the "Helping Families Save Their Homes in Bankruptcy Act of 2009," and H.R. 225, the "Emergency Homeownership and Equity Protection Act", January 22, 2009

Organization Statements:

List of Supporters of Judicial Modification of Mortgages

Coalition Support Letter

Citigroup »

AARP »

Numerous State Attorneys General »

Center for Responsible Lending »

National Association of REALTORS »

National Federation of Community Development Credit Unions »

<u>Letter from Members</u>, this letter was signed by 155 Members requesting judicial mortgage modification be included in the stimulus, December 10, 2008

Administration Position:

(TBA)

Fact Sheets & Talking Points:

Title 1 Section by Section, Judiciary Committee

Title 2 Summary, Financial Services

Housing Bill Q&A, Office of the Speaker

Fact Sheet on H.R. 1106, Office of the Speaker

Summary of the Burdens of Chapter 13 Bankruptcy

Bankruptcy Law Reform – A new tool for foreclosure avoidance, Credit Suisse

Homeowner Affordability and Stability Plan, Administration Information

At Last, Help for Homeowners, Center for American Progress, February 18, 2009

Experts Support Judicial Loan Modification (click here for a list of experts)

- > Jack Kemp, a former Republican secretary of Housing and Urban Development
- ➤ Lewis Ranieri, founder of Hyperion Equity Funds, "father" of securitized mortgage market
- Mark Zandi, co-founder and Chief Economist of Moody's Economy.com
- > Credit Suisse, international financial services firm
- Robert J. Shiller, Professor of Economics and Finance at Yale University and a principal in creating the Standard & Poor's Case-Shiller® Home Price Index
- Professor Adam J. Levitin of Georgetown University Law Center

Press Releases, News Articles & Related Information:

<u>Judiciary and Financial Services Committee Joint Housing Bill Introduced in the House</u>, Financial Services Press Release, February 23, 2009

Op-ed by Chairman Conyers, published in the Wall Street Journal, January 30, 2009 Recent Editorials

Democrats Respond to Obama Administration's Housing Plan:

- ► Hoyer Statement on Obama Administration's Housing Plan
- Pelosi Statement on President Obama's Housing Plan
- Statement of Congressman Barney Frank on the President's Foreclosure Reduction Plan

<u>Judiciary Committee Approves Mortgage Bankruptcy Measure</u>, Judiciary Committee Press Release, January 27, 2009

Other Resources:

Cosponsors of H.R. 1106

H.R. 157 – DISTRICT OF COLUMBIA HOUSE VOTING RIGHTS ACT OF 2009

(Rep. Holmes Norton – Judiciary) (Subject to a Rule)

Bill Text: HTML Version. PDF Version

Bill Summary and Status

Rules Committee: Tuesday, March 3, 2009 at 3:00 p.m. in H-313 the Capitol, Special Announcement,

Meeting Time: 3:00pm Tuesday 3/3, Text of the Bill as Introduced

Committee: Committee on the Judiciary
Committee Staff Contact: Judiciary 5-3951

LEGISLATION AT A GLANCE:

H.R. 157, "the District of Columbia House Voting Rights Act of 2009"

- H.R. 157 was introduced by Delegate Eleanor Holmes Norton on January 6, 2009. H.R 157 provides the District of Columbia with a Representative in the U.S. House of Representatives.
- H.R. 157, beginning in the 112th Congress, permanently increases the U.S. House from 435 to 437 seats, giving one of those seats to the District permanently and the other to the state next in line to increase its Congressional delegation, which is Utah according to 2000 Census data.
- Utah's seat will be at-large through the 112th Congress so as to not upset Utah's current Congressional districts. In the 113th Congress, the seat will become single-member based on the reapportionment and redistricting that occurs following the 2010 Census. Current Census data suggests that Utah will retain this seat after the 2010 Census.
- Congress is relying on the Constitution's District Clause Article I, Section 8, Clause 17 to give the
 District representation in the U.S. House through simple legislation. The District Clause gives
 Congress exclusive and absolute authority over the District.
- As it pertains to Utah's at-large seat, Congress is relying on Article I, Section 4, which gives Congress ultimate authority over federal elections.
- Last Wednesday, February 25th, the Committee on the Judiciary reported H.R. 157 favorably with a vote of 20 to 12. Last Congress, on April 19, 2007, this bill passed the House with a bipartisan vote of 241 to 177. Last Thursday, February 26th, the Senate passed its version of this legislation, S. 160, with a vote of 61 to 37.

Full Committee on the Judiciary Mark-up:

Full Committee Markup: H.R. 157, H.R. 110, H.R. 628 and H.R. 1107, February 25, 2009

- Markup Transcript
- National Journal Report: D.C. Voting Rights Bill Clears Judiciary, Moves To House Floor

Summary of Committee Votes:

- Rep. L. Smith, R-Texas Clarify Member Legal Standing Amendment to the Nadler Substitute Amendment Would clarify that members of Congress have a legal standing to challenge the underlying legislation in court. The Nadler substitute amendment would permanently increase the membership of the House of Representatives to 437 in the 112th Congress, by granting a seat to the District of Columbia and another one to the state next in line to receive a House seat based on the 2000 Census apportionment calculations. Rejected 15-15: R 15-0; D 0-15; I 0-0 (Roll Call »).
- Rep. Gohmert, R-Texas Retrocession Substitute Amendment to the Nadler Substitute Amendment
 — Would strike the text of the underlying measure and insert provisions that would retrocede all land in
 the District of Columbia except the federal buildings back to the state of Maryland. Ruled Not
 Germane.
- Rep. Sensenbrenner, R-Wis. Redistricting in Lieu of At-Large District Amendment to the Nadler Substitute Amendment Would specify that no special election could occur unless the state that would receive the additional representative has enacted a redistricting plan to take into account additional representatives. It would require the state of Utah to carve out a fourth congressional district instead of electing a representative to the 112th Congress from an at-large district. Rejected 9-19: R 9-0; D 0-19; I 0-0 (Roll Call »).
- Rep. Gohmert, R-Texas D.C. Income Tax Elimination Substitute Amendment to the Nadler Substitute Amendment Would strike the text of the underlying measure and insert provisions that would eliminate the federal income tax for D.C. residents. **Ruled Not Germane.**
- Rep. Gohmert, R-Texas Elimination of Taxes on D.C. Residents Amendment to the Nadler Substitute

 <u>Amendment</u> Would add language to the underlying measure that would eliminate the federal income tax for D.C. residents. **Ruled Not Germane.**
- Rep. Chaffetz, R-Utah Elimination of D.C. Delegate Amendment to the Nadler Substitute Amendment
 Would eliminate the office of the delegate of the District of Columbia. Ruled Not Germane.
 - Chairman Conyers Motion to Table the Appeal of the Ruling of the Chair Motion to table the appeal of the ruling of the chair that the Chaffetz, R-Utah, amendment was not in order because it was not germane to the bill and not within the committee's jurisdiction. The Chaffetz amendment would eliminate the office of the delegate of the District of Columbia. Agreed to 17-11: R 0-11; D 17-0; I 0-0 (Roll Call »).
- Rep. Issa, R-Calif. Elimination of Utah Representative Amendment to the Nadler Substitute
 <u>Amendment</u> Would strike the provision that would create an additional House seat for the state of Utah. Rejected 12-20: R 12-0; D 0-20; I 0-0 (Roll Call »).
- Rep. Chaffetz, R-Utah D.C. Senate Representation Amendment to the Nadler Substitute Amendment Would add a provision stating that nothing in the measure should be construed to express the sense of Congress that the District of Columbia should have representation in the Senate. Rejected 12-18: R 12-0; D 0-18; I 0-0 (Roll Call »).
- Rep. S. King, R-Iowa Eliminate D.C. Gun Restrictions Amendment to the Nadler Substitute

 Amendment Would amend the D.C. Council's code to eliminate firearm registration requirements and the District's semi-automatic weapons ban. Withdrawn.
- Rep. Nadler, D-N.Y Substitute Amendment Would permanently increase the membership of the House of Representatives to 437, by granting a seat to the District of Columbia and another one to the state next in line to receive a House seat based on the 2000 Census apportionment calculations. The

additional seats would be added beginning with the 112th Congress. Based on the 2000 Census reapportionment calculations the state of Utah would receive the new House seat. The substitute amendment would allow D.C. to have additional representatives apportioned by the Census if the population increases. It would specify that future apportionments would be based on 437 seats. It also would provide for expedited judicial review of the legislation. It would clarify that the District remain entitled to three presidential electors in the Electoral College. It would provide that if any provisions of the measure are deemed invalid or unenforceable, the entire measure is deemed invalid. **Adopted 24-5: R 7-5; D 17-0; I 0-0** (Roll Call »).

• Vote to Report: Favorably Reported to the Full House, as Amended, by a Roll Call Vote of 20-12: R 0-12; D 20-0; I 0-0 (Roll Call »).

CRS Reports:

RS22628: Congressional Redistricting: The Constitutionality of Creating an At-Large District

<u>RL33824</u>: The Constitutionality of Awarding the Delegate for the District of Columbia a Vote in the House of Representatives or the Committee of the Whole

RS22579: District of Columbia Representation: Effect on House Apportionment

<u>RL33830</u>: District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals

GAO Reports:

(TBA)

CBO Report:

CBO Cost Estimate: As Ordered Reported by the House Committee on the Judiciary

Committee on the Judiciary Hearings:

H.R. 157, the "District of Columbia House Voting Rights Act of 2009" »

Subcommittee on the Constitution, Civil Rights, and Civil Liberties Hearing, January 27, 2009

Witness Testimony:		
Panel I	Panel II	
Hon. Steny Hoyer	Wade Henderson	
Majority Leader	President & CEO	
U.S. House of Representatives	Leadership Conference on Civil Rights	
5 th District, MD	Yolanda Lee	
Hon. Jason Chaffetz	U.S. Army Guard Captain	
U.S. House of Representatives	District of Columbia National Guard	
3 rd District, UT	Jonathan Turley	
Hon. Louie Gohmert	J.B. & Maurice Shapiro Professor	
U.S. House of Representatives	of Public Interest Law	
1 st District, TX	GW University Law School	
Hon. Tom Davis	Viet Dinh	
U.S. House of Representatives	Professor of Law	
11 th District, VA	Georgetown University Law Center	

Organization Statements:

Coalition Support Letter, January 14, 2009

List of Organizations Supporting DC Voting Rights

25 Former Elected and Appointed Officials

25 Legal Scholars Support Constitutionality of DC Voting Rights

LCCR, National Urban League and NAACP Letter

DC Vote and 28 Coalition Organizations Letter

Leadership Conference on Civil Rights

Religious Action Center of Reform Judaism

People For the American Way

Democracy for Utah

League of Women Voters of the U.S.

National Urban League

DC for Democracy and Democracy For America

International Association of Fire Fighters

League of Women Voters of the U.S.

DC GOP

National Urban League

League of Women Voters

Administration Position:

(TBA)

Fact Sheets & Talking Points:

(TBA)

Press Releases, News Articles & Related Information:

(TBA)

Other Resources:

Cosponsors of H.R. 157

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